



ENVIRONMENTAL PROTECTION AGENCY

[FRL-9508-1]

New York State Prohibition of Discharges of Vessel Sewage; Final Affirmative Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Determination.

SUMMARY: Notice is hereby given that, pursuant to Clean Water Act, Section 312(f)(3) (33 U.S.C. 1322(f)(3)), the State of New York has determined that the protection and enhancement of the quality of the New York State portions of Lake Ontario requires greater environmental protection and has petitioned the United States Environmental Protection Agency (EPA), Region 2, for a determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for those waters, so that the State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters.

The New York State Department of Environmental Conservation (NYSDEC) has proposed to establish a Vessel Waste No Discharge Zone (NDZ) for the New York State portion of Lake Ontario (“Lake”) including the waters of the Lake within the New York State boundary, stretching from the Niagara River (including the Niagara River up to Niagara Falls) in the west, to Tibbetts Point at the Lake’s outlet to the Saint Lawrence River in the east. The proposed No Discharge Zone encompasses approximately 3,675 square miles and 326 linear shoreline miles,

including the navigable portions of the Lower Genesee, Oswego, and Black Rivers; numerous other tributaries, harbors, and embayments of the Lake including Irondequoit Bay, Sodus Bay, North/South Ponds, Henderson Bay, Black River Bay and Chautmont Bay; and an abundance of formally designated habitats and waterways of local, state, and national significance. NYSDEC certified the need for greater protection of the water quality. EPA hereby makes a final affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for Lake Ontario.

EPA published a tentative affirmative determination on October 5, 2011 in the Federal Register. Public comments were solicited for 30 days and the comment period ended on November 4, 2011. EPA received a total of eight (8) comments via letter and email. The comment tally was seven (6) in favor of, and two (2) questioning or opposing the No Discharge Zone designation. All the relevant comments received have been considered in the final affirmative determination. This Federal Register document addresses comments submitted in response to the October 5, 2011 (Volume 76 No. 193) Federal Register document.

Response to Comments:

1. Comment: Several commenters, including boaters, paddlers and community advocates, expressed strong support for EPA's action to establish a vessel waste no discharge zone for Lake Ontario. Some commenters pointed out that this action will reduce pathogens and chemicals, improve water quality and further protect and restore the Lake.

EPA Response: EPA is in full agreement that designating Lake Ontario is an important step to further protect this valuable natural resource, water quality, wetlands and habitats throughout the U.S. portions of Lake Ontario.

2. Comment: One commenter stated that discharges from boats are a relatively small source of pollution compared to the pollution caused by farm runoff into the Lake.

EPA Response: These comments go beyond the scope of EPA's authority in this action. EPA's authority here is limited to determining whether adequate pumpout facilities exist. Establishing a no discharge zone for vessel sewage will have a positive effect on water quality in the Lake.

3. Comment: One commenter expressed concerns about the conditions and availability of the pumpout facilities at Sodus Point in Lake Ontario.

EPA Response: The criterion established by the Clean Vessel Act regarding the adequate number of pumpouts per vessel population is one pumpout per 300 to 600 vessels. NYSDEC has submitted pumpout information (including location, phone numbers, latitude/longitude, VHF channel, dates and hours of operation, fees, and capacity) outlining how areas of the Lake meet or exceed this criterion; therefore, EPA has determined that there are adequate pumpout facilities. EPA recognizes the importance of adequate pumpouts to service the boating activity within a given waterbody. New York State is responsible for ensuring that all of the facilities are accessible and operational. There are six pumpouts (Pultneyville Yacht Club, Sodus Bay Yacht Club, Krenzer Marine, Inc., Arney's Marina, Inc., Anchor Resort and Marina, and Bayside Marina) available in the vicinity of Sodus Bay in Wayne County. Therefore, in the event that a particular facility is not accessible or operational, the public should contact NYSDEC.

4. Comment: One commenter stated that the pumpout facilities that serve recreational vessels may not be reasonably available to commercial tugboat, towboats and barges that service the area because some of those commercial vessels are too large to dock where the recreational vessel pumpout facilities are located. The commenter also indicated that in order to

comply with the NDZ requirements, a tugboat or towboat must disable federally compliant marine sanitation devices and install holding tanks for effluent. Such retrofitting is complicated due to the extremely limited space aboard a towing vessel and the necessity to ensure that the additional weight does not negatively impact the stability of the vessel.

EPA Response: EPA understands that some commercial vessels may not be able to use pumpouts designed for recreational vessels, and found that “honey dipper” pumpout trucks are readily available for hire and are able to reach commercial vessels on the commercial docks on the Lake. In order to achieve the storage capacity needed to hold sewage on board, a Type II Marine Sanitation Device (MSD) can be converted to a Type III MSD, commonly called a holding tank, which can be equipped with the valve, usually called a Y-valve, needed to discharge to a pumpout truck.

5. One commenter suggested that EPA provide a suitable lag time between when an NDZ is established and when compliance is required to improve compliance and ease the heavy financial burden on commercial vessel owners. According to this commenter, the current model of instant implementation without a phase-in period does not allow vessel owners to make the necessary changes in a planned and cost-effective fashion.

EPA Response: EPA’s authority here is limited to determining whether adequate pumpout facilities exist, it cannot base its determination on the cost of compliance and, once EPA issues a final affirmative determination, it is up to the petitioning state, in this case, New York, to determine how to implement and enforce the NDZ.

FOR FURTHER INFORMATION CONTACT: Moses Chang, (212) 637-3867, email address: chang.moses@epa.gov. The EPA Region 2 NDZ website is:

<http://www.epa.gov/region02/water/ndz/index.html>. A copy of the State's NDZ petition can be found there.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the State of New York (NYS or State) has petitioned the United States Environmental Protection Agency, Region 2, pursuant to section 312(f)(3) of Public Law 92-500 as amended by Public Law 95-217 and Public Law 100-4, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the NYS portion of Lake Ontario. Adequate pumpout facilities are defined as one pumpout station for every 300 to 600 boats pursuant to the Clean Vessel Act: Pumpout Station and Dump Station Technical Guidelines (Federal Register, Vol. 59, No. 47, March 10, 1994).

As one of the nation's premier waterbodies, the open waters, harbors, embayments, creeks and wetlands of Lake Ontario support a remarkable diversity of uses – fish spawning areas, breeding grounds, valuable habitats, commercial and recreational boating, and a profusion of recreational resources. The Lake serves as an economic engine for the region and a place of great natural beauty, heavily used and enjoyed by the citizens of the many lakeshore communities and throughout the Lake Ontario Watershed, which encompasses about one-quarter of New York State. It is also a source of drinking water for 760,000 people. NYSDEC developed their petition in collaboration with the New York State Department of State (DOS) and the New York State Environmental Facilities Corporation (EFC) in order to establish a vessel waste No Discharge Zone (NDZ) on the open waters, tributaries, harbors and embayments of New York State's portion of Lake Ontario.

The Clean Vessel Act requires that one pumpout station be available for every 300 to 600 boats in order to support an NDZ determination. Accordingly, for EPA to determine that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the New York State portion of Lake Ontario, the State must demonstrate that the pumpout-to-vessel ratio meets the requirement. In its petition, the State described the recreational and commercial vessels that use Lake Ontario, and the pumpout facilities that are available for their use.

Based on recreational boater registrations obtained through the New York State Office of Parks, Recreation and Historic Preservation's 2009 Boating Report for the counties of Niagara, Orleans, Monroe, Wayne, Cayuga, Oswego and Jefferson (all of which have shoreline on Lake Ontario), a general estimate places the recreational vessel population at 10,050.

There are 28 pumpout facilities funded by the Clean Vessel Assistance Program (CVAP) in the relevant areas of the Lake. There are also nine other (non-CVAP funded) pumpouts available for recreational and small commercial vessels for a total of 37 facilities. These facilities either discharge to a holding tank, to a municipal wastewater treatment plant or to an on-site septic system. With 37 pumpouts available for the 10,050 recreational and small commercial vessels that use the lake, the pumpout-to-vessel ratio for those vessels is 1:272 (37:10,050). Because EPA did not have sufficient information for seven of the nine non-CVAP funded pumpout facilities in NYSDEC's petition, we also evaluated the vessel to pumpout ratio using a more conservative total of 30 pumpout facilities for 10,050 boats yielding a 1:335 pumpout per vessel ratio. (Note: These are the 30 pumpout facilities identified in the table below.) Based on NYS 2009 boater registrations, the pumpout facility ratios for each individual county are as follows: Orleans (1:138), Jefferson (1:193), Niagara (1:223), Oswego (1:231), Wayne (1:234), Cayuga

(1:252), and Monroe (1:449). Therefore, adequate pumpout facilities for the safe and sanitary removal and treatment of sewage for recreational vessels are reasonably available for the New York portions of the Lake as a whole and for each county along the Lake Ontario shore line.

In addition, Lake Ontario is used by commercial vessels. Commercial vessel populations were estimated using data from the National Ballast Information Clearinghouse (NBIC), which records ballast water discharge reports for arriving ships, and interviews with administrators involved with the two main commercial ports on Lake Ontario, Oswego and Rochester.

In the calendar year 2010, ballast manifests showed 73 vessel arrivals at the Port of Oswego, 43 of these ships were bulkers carrying a wide array of goods, such as petroleum, aluminum and salt. The other 30 ships consist of passenger ships, tugs and barges. During the 2010 survey, ballast manifests showed 24 commercial vessels arriving at the Port of Rochester, one passenger ship and 23 bulkers. As with the Port of Oswego, all other commercial vessels in the Port of Rochester are transient. Summing these sources, an upper bound estimate of commercial boat traffic in Lake Ontario using New York ports is approximately 150 vessels a year, less than one every other day. Although there are no fixed commercial vessel pumpouts at the Ports of Oswego or Rochester, mobile pumpout services are available for hire. The Port of Rochester reported that “honey dipper” trucks have come in to pumpout commercial vessels on occasion while they are docked in the Port. The Port of Rochester supplies all commercial vessels with the names of pumpout trucks (as well as other services, such as solid waste handlers) at the time they receive their permits to dock at the terminal. Therefore, it appears that there are adequate pumpout facilities to serve the commercial vessels in Lake Ontario.

Based on the above information which supports that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for Lake Ontario, the State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters.

A list of the pumpout facilities, phone numbers, locations, hours of operation, water depth and fees is provided as follows:

List of Pumpouts in the Lake Ontario NDZ Proposed Area						
#	Name	Location	Contact Information	Days and Hours of Operation	Water Depth (feet)	Fee
1	Youngstown Yacht Club	Lower Niagara River	716-754-8245	Apr-Nov Mon-Fri 9am-5pm	9'-12'	\$5.00
2	NYSOPRSH- Wilson- Tuscarora SP Marina	Tuscarora Bay	716-278-1775	24 hours	5'	\$5.00
3	Tuscarora Yacht Club	Tuscarora Bay	716-434-4475	9am-5pm	7'	\$5.00
4	Rochester Yacht Club	Genesee River/Lake Ontario	585-342-5511/585-314-6460	Mon-Sun 7am-10pm	9'	Free Members/\$10.00-Guest
5	City of Rochester- River Street Waterfront	Genesee River-Canal North to 490 Dam	716-428-7045	Jan-Dec 24hours	4'-6'	0.00

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#	Name	Location	Contact Information	Days and Hours of Operation	Water Depth (feet)	Fee
6	County of Monroe-Irondequoit Bay NYS Marine	Irondequoit Bay	716-428-5301	Apr-Oct 7am-7pm	8'	\$5.00
7	Four C'S Marina at Oak Orchard Creek	Oak Orchard Creek	585-682-4224	6am-7pm	10'	\$5.00
8	Eagle Creek Marina	Oak Orchard Creek	585-723-5708	8am-5pm	8'-9'	\$5.00
9	Braddock Marina	Braddock Bay	585-227-1579	10am-4pm	2'	\$8.00
10	Newport Marina, Inc.	Irondequoit Bay	585-544-4950	Mar-Dec 9am-6pm	6'	\$10.00
11	Sutter's Marine, Inc.	Irondequoit Bay	716-217-8811	Apr-Nov Mon-Fri 6:30am-5:00pm	7'	\$5.00
12	Pultneyville Yacht Club	Pultneyville	315-524-2762	Apr-Sep 24 hours	6'	\$5.00
13	Sodus Bay Yacht Club	Pultneyville	315-483-9550	Apr-Sep 24 Hours	6'	\$5.00
14	Krenzer Marine, Inc.	Sodus Bay	315-483-8808	Apr-Nov 8am-5pm	3'-6'	0.00

	List of Pumpouts in the Lake Ontario NDZ Proposed Area					
#	Name	Location	Contact Information	Days and Hours of Operation	Water Depth (feet)	Fee
15	Arney's Marina, Inc.	Sodus Bay	315-483-9111	Apr-Oct 9am-5pm	7'	\$5.00
16	Anchor Resort and Marina	Little Sodus Bay	315-947-5331	Apr-Sep 6am-6pm	8'-10'	\$5.00
17	Bayside Marina	Little Sodus Bay	315-947-5773	Apr-Oct 24 hours	8'	\$5.00
18	Port of Oswego-International Marina West	(Erie) Oneida Shore Park Terminal-Three Rivers Port Terminal	315-343-4503	Apr-Nov 7am-9pm	15'	\$5.00
19	Port of Oswego-East Marina	Three Rivers Point Terminal – Lock 8 (Wright's Landing)	315-343-4503	Apr-Nov 7 am-9pm	18'	\$5.00
20	Mexico Bay Co.	Mexico Bay – Little Salmon River	315-963-3221	Daylight Hours		\$0.00
21	Wigwam Marina	North Pond	315-387-3001	12pm - 4pm	8'	\$0.00
22	Seber Shores Marina	North Pond	315-387-5502	May-Nov 9am – 5pm	8'	\$5.00

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#	Name	Location	Contact Information	Days and Hours of Operation	Water Depth (feet)	Fee
23	Harbor's End, Inc.	Henderson Bay and Harbor	315-938-5425	Apr-Nov 8am – 4:30 pm	4.5'	\$5.00
24	Henchen Marina	Henderson Bay and Harbor	315-938-5313	Apr-Oct 7am – 8pm	8'	\$10.00
25	Harbor View Marina, Inc.	Henderson Bay and Harbor	315-938-5494	May-Oct 8am – 5pm		\$0.00
26	Grunerts Marina	Black River Bay	315-646-2003			\$0.00
27	Navy Point Marina	Black River Bay	315-646-3364	May-Nov 8am – 5pm	10'	\$0.00
28	Madison Barracks	Black River Bay	315-646-3374	May 15 – Oct 15 8am – 6pm	10'	\$0.00
29	Kitto's Marina	Chaumont Bay	315-788-2191	Apr-Oct 8am – 7pm	7'	\$0.00
30	Chaumont Club	Black River Bay	315-649-5018	Apr 15 – Nov 7am – 5pm	6.5' – 7'	\$0.00

Based on the information above, EPA hereby makes a final affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are available for the waters of the New York State portion of Lake Ontario.

Judith A. Enck,

Regional Administrator, Region 2.

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